

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Petition to Authorize</b>	)	
<b>Co-Primary Sharing of the</b>	)	<b>RM - 8159</b>
<b>450 MHz Air-To-Ground</b>	)	
<b>Radiotelephone Service</b>	)	
<b>with BETRS</b>	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** January 28, 2000

**Released:** January 28, 2000

By the Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order (Order) we deny the petition for rulemaking filed November 9, 1992, by the United States Telephone Association, National Telephone Cooperative Association, Organization for the Protection and Advancement of Small Telephone Companies, National Rural Telephone Association, and Rural Electrification Administration (collectively, the Petitioners) requesting that the Commission authorize the use of certain air-to-ground frequencies in the 450 MHz band for Basic Exchange Telecommunications Radio Service (BETRS) on a co-primary basis.<sup>1</sup>

2. We find that the petition and the record developed in response to the petition are now stale. To the extent that Petitioners consider the requested relief to remain relevant to their needs, we find that the public interest would be better served if the Petitioners were to file an updated petition for rulemaking.

**II. BACKGROUND**

3. In 1988, the Commission allocated BETRS specific channels in the 150 MHz, 450 MHz, and 800 MHz bands in response to a 1986 petition for rulemaking filed by the Petitioners.<sup>2</sup> The instant petition for rulemaking filed by Petitioners urges the Commission to authorize the use of older air-to-ground service channels in the 450 MHz band on a co-primary

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<sup>1</sup> See Petition to Authorize Co-Primary Sharing of the 450 MHz Air-Ground Radiotelephone Service with BETRS, filed November 9, 1992 (Petition).

<sup>2</sup> See Basic Exchange Telecommunications Radio Service, CC Docket No. 86-495, *Report and Order* 3 FCC Rcd 214 (1988), Basic Exchange Telecommunications Radio Service, CC Docket No. 86-495, *Memorandum Opinion and Order on Reconsideration*, 4 FCC Rcd 5017 (1989).

basis with BETRS because of the limited number of channels that are currently available for BETRS use. Petitioners contend that providing access to these channels will not only promote the public interest in universal service but will also be more cost effective.<sup>3</sup>

### III. DISCUSSION

4. We find that due to the passage of time, the petition for rulemaking and the record in this proceeding have become stale. The petition was filed in November 1992 and the Commission placed it on public notice shortly thereafter.<sup>4</sup> Opposition comments and reply comments in response to the petition were subsequently filed.<sup>5</sup> Due to the significant passage of time since the filing of the petition and the filing of the pleadings that comprise the record in this proceeding, we are concerned that the petition's proposals regarding BETRS, and the information in the record, have become outdated. Moreover, during the same period of time, alternative communications technologies, such as wireless local loop and microwave systems, have developed in other frequency bands and potentially represent more cost efficient alternatives than BETRS for providing telecommunication services in rural areas. For these reasons, we conclude that the public interest is better served by denying the petition for rulemaking and not initiating a rulemaking. To the extent that the proposals made in the petition continue to be relevant to the Petitioner's interests notwithstanding the passage of time, the Petitioners may file a more current version of their petition for rulemaking for our consideration.

### IV. ORDERING CLAUSE

5. Accordingly, IT IS ORDERED, pursuant to Section 1.407 of the Commission's rules, 47 C.F.R. Section 1.407, that the petition for rulemaking filed by the United States Telephone Association, National Telephone Cooperative Association, Organization for the Protection and Advancement of Small Telephone Companies, National Rural Telephone Association, and Rural Electrification Administration, IS DENIED without prejudice.

### FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Sugrue  
Chief, Wireless Telecommunications Bureau

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<sup>3</sup> 1992 Petition at iii.

<sup>4</sup> See *Public Notice*, Report No. 1923 (rel. Jan. 8, 1993).

<sup>5</sup> Comments in opposition were filed on February 8, 1993 by the National Business Aircraft Association, Inc. (NBAA) and the Mobile Telecommunication Technologies Corp (MTEL). Reply comments were filed on February 23, 1993 by the United States Telephone Association Cooperative Association, Organization for the Protection and Advancement of Small Telephone Companies, National Rural Telecommunications Association, and the Rural Electrification Administration.